

(2010) 03 PAT CK 0001
In the Patna High Court

Smt. Ram Badan Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Citation : (2010) 03 PAT CK 0001

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioners, State and the Private Respondent second party.

2. Petitioners are aggrieved by the order dated 07.06.2008 passed by the Joint Director, Consolidation, Gaya in Revision Case No. 1202/1991-92, Annexure-5, whereunder order dated 30.10.1991 passed by the Deputy Director, Consolidation in Appeal Case No. 393/91, Annexure-4 and original order dated 14.3.1991 passed by the Consolidation Officer, Aurangabad in Consolidation Case No. 987/76, Annexure-3 refusing to entertain the objection of the petitioners in regard to the lands in-question on the basis of the sale deed dated 19.11.1965 has been affirmed.

3. It is submitted on behalf of the petitioners that the aforesaid three orders have been passed ignoring the settled legal position that the two brothers, namely, Ram Dahin Singh and Jugal Singh having executed several sale deeds together shall be deemed to be joint even in respect of the property which has been acquired in the name of Jugal Singh prior to the execution of joint sale deeds as having acquired the property Jugal Singh by executing the joint sale-deeds with Ram Dahin Singh blended the acquired property with the common stock and abandoned his separate claim over the same.

4. In order to buttress the aforesaid submission learned Counsel for the petitioners with reference to the genealogical table incorporated in the order of the Joint Director and Consolidation Officer submitted that one Prayag Singh was the common ancestor of Ram Dahin Singh, the vendor of sale deed dated

19.11.1965 executed in favour of the husband of Petitioner No. 1, father of Petitioner Nos. 2 to 8 and Jugal Singh who executed deed of gift dated 13.1.1971 in favour of Private Respondent-2nd Party. He had four sons; (1). Durga Singh, (2). Daroga Singh, (3). Shivnandan Singh and (4). Deonandan Singh out of whom Deonandan Singh died issueless. Durga Singh and Daroga Singh had one son each, namely, Ramesh Singh and Lakshmi Singh. Private Respondent-2nd Party are the sons and daughters of Lakshmi Singh. The 3rd son of Prayag Singh, Shivnandan Singh had three sons, namely, Ram Janam Singh, Ram Dahin Singh and Jugal Singh. Ram Janam Singh died issueless. The vendor of the husband of petitioner No. 1 and father of petitioner Nos. 2 to 8 Ram Dahin Singh and Jugal Singh, the donor of Private Respondents-2nd Party survived their father Shivnandan Singh. With reference to the aforesaid lineage of the family it is submitted that even after death of Shivnandan Singh his sons remained together and the acquisition made in the name of Jugal Singh vide Hukumnama dated 18.07.1950 and sale deed dated 4.1.1951, 8.2.1952, 13.9.1952 was jointly dealt with by the two brothers, namely, Ram Dahin Singh and Jugal Singh under sale-deed dated 18.4.1956, 20.6.1956, 10.7.1956. Dispute, however, arose between the two brothers when the lands acquired in the name of Jugal Singh was exclusively mutated in his name vide B.T. Act Case No. 18/62-63. Ram Dahin Singh thereafter transferred the lands in-question in favour of Deo Sagar Prasad Singh, husband of Petitioner No. 1 and father of Petitioner Nos. 2 to 8 vide registered sale-deed dated 19.11.1965 for a consideration of Rs. 20,000/-. Deo Sagar Prasad Singh thereafter filed Title Suit No. 23/1975 against Jugal Singh and others for declaration of his status as the occupancy raiyat of the lands in-question as also for recovery of possession. During the pendency of the suit Jugal Singh executed registered deed of gift dated 13.1.1971 with reference to the lands in-question in favour of Private Respondent-2nd Party. The suit was decreed under judgment and decree dated 5th December, 1975 (Annexure-1) against which appeal was filed which abated in the light of the provisions contained in Section 4(c) of the Bihar Consolidation of Holdings & Prevention of Fragmentation Act, 1956. During the consolidation proceedings Register of Land was published indicating Jugal Singh as the raiyat of the lands in-question against which the husband of Petitioner No. 1 and father of Petitioner Nos. 2 to 8 filed his objection that the lands in-question may have been acquired in the personal name of Jugal Singh but Jugal Singh having jointly executed the sale-deed with his brother Ram Dahin Singh dated 18.4.1956, 20.6.1956 and 10.7.1956 blended the acquisition made in his favour in the joint stock and the properties acquired in the name of Jugal Singh cannot be treated as the exclusive property of Jugal Singh and the entries made in the Register of Land indicating the lands in-question to be that of Jugal Singh be corrected in the light of the sale deed dated 19.11.1965 executed by Ram Dahin Singh in favour of Deo Sagar Prasad Singh. Aforesaid objection of Deo Sagar Prasad Singh has been rejected by the Consolidation Officer under order dated 14.03.1991, Annexure-3 which has been affirmed by the Deputy Director, Consolidation under order dated 30.10.1991, Annexure-4 and the revisional order dated 07. 06.2008,

Annexure-5.

5. Learned Counsel for the petitioners has challenged the aforesaid three orders on the ground that Jugal Singh having blended the property acquired in his name by the Hukumnama and the three sale-deeds in the common stock by executing the subsequent three sale-deeds dated 18.4.1956, 20.6.1956 and 10.7.1956 the properties in-question could not have been recorded in the exclusive name of Jugal Singh during mutation, consolidation proceeding as in 1960 there was partition between Ram Dahin Singh and Jugal Singh in which the subject matter of sale deed dated 19.11.1965 came to the share of Ram Dahin Singh and in appreciation of the aforesaid submission this Court should set aside the aforesaid three orders and direct the Consolidation Officer to correct the entries made in the Register of Land with respect to the lands in-question in the light of the sale deed dated 19.11.1965.

6. Aforesaid submission is being opposed by the counsel for the Private Respondent-2nd Party as according to him the lands in-question were acquired in the exclusive name of Jugal Singh vide Hukumnama and the three sale deeds after there was partition between Ram Dahin Singh and Jugal Singh in 1947-48 and Jugal Singh remained in exclusive possession of the lands in-question throughout in appreciation whereof Jugal Singh was mutated with respect to the lands in-question under B.T. Act Case No. 18/62-63 on the basis of which the Register of Land was published during the consolidation proceeding indicating Jugal Singh as the raiyat of the lands in-question, as such, this Court should be slow in interfering with the impugned orders passed by the Consolidation authorities as they have made entry in the Register of Land on the basis of Hukumnama and sale-deeds executed in favour of Jugal Singh as also his actual physical possession over the same. In support of the aforesaid submission learned Counsel has also relied on the judgment of the Hon"ble Supreme Court in the case of AIR 2003 3800 (SC) paragraphs 8,9,17, 18 and 19. Paragraph 19 of the said judgment is quoted hereinbelow:

Another contention urged for the respondents was that assuming Item 1 property to be self-acquired property of Appellant 1, he blended the said property with the joint family property and, therefore, it has become joint family property. Assuming the respondents can be permitted to raise such a plea without evidence in support thereof, the law on the aspect of blending is well settled that property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein; but to establish such abandonment a clear intention to waive separate rights must be established.

7. There is no evidence on record to suggest that there was partition effected between Ram Dahin Singh and Jugal Singh. Properties were acquired in the name of Jugal Singh vide Hukumnama dated 18.7.1950, sale-deeds dated 4.1.1951 8.2.1952, 13.9.1952 but thereafter Jugal Singh by executing joint sale-

deed dated 18.4.1956, 20.6.1956 and 10.7.1956 with Ram Dahin Singh voluntarily threw the properties acquired in his exclusive name into the common stock with the intention of abandoning his separate claim over the same. In view of the contents of the aforesaid three sale-deeds of the year 1956 the Consolidation authorities erred in law in publishing the Register of Land with regard to the lands in-question in the exclusive name of Jugal Singh. The authorities further erred in rejecting the objection of the vendee Deo Sagar Prasad Singh, husband of Petitioner No. 1 and father of Petitioner Nos. 2 to 8 to modify the entry in the Register of Land with regard to the lands in-question to include their name to the extent of half share with respect to the lands in-question. The impugned order dated 07.06.2008 passed by the Joint Director, Consolidation, Gaya, Annexure-5, order dated 30.10.1991 passed by the Deputy Director, Consolidation, Annexure-4 and order dated 14.3.1991 passed by the Consolidation Officer, Aurangabad, Annexure-3 are, accordingly, set aside and the matter is remanded back to the Consolidation Officer with direction to modify the entry made in the Register of Land with regard to the lands in-question so as to include and indicate the half share of the petitioners in respect of the lands in-question.

8. The writ application is, accordingly, allowed to the extent indicated above.